



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/155585

PRELIMINARY RECITALS

Pursuant to a petition filed February 18, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on March 13, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined Petitioner's FoodShare allotment and whether the agency correctly denied Petitioner's request for auxiliary benefits for February 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

;

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Pang Thao-Xiong, Income Maintenance Specialist II
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On December 24, 2013, the agency sent the Petitioner a Notice of Proof Needed requesting income verification from Staff Works. (Exhibit 9)

3. On January 13, 2014, the agency sent the Petitioner a notice, indicating that her FoodShare benefits would be ending effective February 1, 2014, because she did not provide the requested proof. (Exhibit 10)
4. On January 17, 2014, the agency sent the Petitioner another copy of the December 24, 2013 Notice of Proof Needed. (Exhibit 11)
5. On January 23, 2014, the Petitioner submitted an Employer Verification of Earnings Form (EVFE), that indicated that the Petitioner worked 12-36 hours per week at \$8.50 per hour.

$12 + 36 = 48 \text{ hours}; 48 \text{ hours}/2 = 24 \text{ average hours worked per week}$
 $24 \times \$8.50 = \$204 \text{ average earned per week}$
 $\$204 \times 4.3 = \877.20 per month

(Exhibit 13)
6. On January 27, 2014, the agency sent the Petitioner a notice indicating that as of February 1, 2014, she would be receiving \$76.00 per month in FoodShare benefits. (Exhibit 15)
7. On February 4, 2013, the Petitioner contacted the agency and indicated that the EVFE she submitted on January 23rd contained incorrect information regarding the number of hours that she works. The Petitioner submitted a new EVFE indicating that she works 12 hours per month at \$8.50 per hour. (Exhibits 7 and 17)
8. On February 7, 2014, the agency sent the Petitioner a notice indicating that as of February 1, 2014, she would be receiving \$189 per month in FoodShare benefits. (Exhibit 19)
9. On February 10, 2014, the Petitioner contacted the agency to inquire why she had not received auxiliary benefits for February. On February 11, 2014, the agency advised the Petitioner that the employment information that she reported on February 4, 2014, would only affect March benefits, as such, no auxiliary benefits would be issued for February 2014. (Exhibit 7)
10. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 18, 2014. (Exhibit 1)
11. The Petitioner's household size/assistance group size is one. (Exhibit 18)
12. Petitioner did not report a rent obligation, but is still considered to be responsible for utilities. (Exhibit 19)
13. Petitioner works 12 hours a month, earning \$8.50 per hour. This works out to be:

$12 \text{ hours} \times \$8.50 \text{ per hour} = \102 per month

(Exhibit 17)

DISCUSSION

DID THE AGENCY CORRECTLY DETERMINE PETITIONER'S FOODSHARE BENEFITS?

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has a member over age 60. 7 *Code of Federal Regulations (CFR)*, §273.9(b); *FoodShare Wisconsin Handbook (FSH)*, § 1.1.4. The agency must budget all income of the FS household, including all earned and unearned income. 7 *CFR* § 273.9(b); *FoodShare Wisconsin Handbook (FSH)*, § 4.3.1. The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH*, §4.1.1.

Once a household passes the gross income test the following deductions are applied in determining the FoodShare allotment. (*FSH*, at § 4.6):

- (1) a standard deduction –

This is \$152 per month for a household of 1-3 people, 7 *CFR* § 273.9(d)(1):

- (2) an earned income deduction - which equals 20% of the household's total earned income, 7 *CFR* § 273.9(d)(2);
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, 7 *CFR* § 273.9(d)(3);
- (4) dependent care deduction for child care expenses, 7 *CFR* § 273.9(d)(4); and
- (5) shelter and utility expenses deduction the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 *CFR* § 273.9(d)(5).

The heating standard utility allowance (HSUA) is \$450 per month, but Effective October 1, 2013.

During part of the time in question there is a cap of \$478.00 on the shelter cost deduction, *unless* a household has an elderly, blind or disabled member.

FSH, §§ 4.6.7.1 and 8.1.3.

The term ‘disabled’ is a term with a definition as to the FoodShare program:

3.8.1.1 EBD Introduction

An elderly individual is a food unit member age 60 or older.

A disabled individual is a food unit member who receives disability or blindness benefits from any of these programs: [SSA](#), [MA](#), [SSI](#) or SSI related MA, Railroad Retirement Board ([RRB](#)).

FSH, §3.8.1.1.

Applying the applicable deductions to Petitioner’s income we have the following net income calculation, based upon the January 23, 2014, EVFE:

Gross Income	\$877.20	Rent	\$0.00
No Earned Income Deduction	-\$175.44	HSU	\$450.00
Standard Deduction	-\$152.00	50% Net income	-\$274.88
No Medical Expenses exceeding \$35			
No Dependent Care Expenses		Excess Shelter Expense	\$175.12
<hr/>			
Net Income	\$549.76		
Excess Shelter Expense	-\$175.12		
<hr/>			
Net Income	\$374.64		

Individuals, in a household of one, with net income of \$374.64 qualify for a FoodShare allotment of \$76.00 per month *FSH* §8.1.2. Thus, the agency’s calculations were correct, when it applied the information from the January 23, 2014 EVFE.

Applying the applicable deductions to Petitioner's income we have the following net income calculation, based upon the February 4, 2014, EVFE:

Gross Income	\$102.00	Rent	\$0.00
No Earned Income Deduction	\$20.40	HSU	\$450.00
Standard Deduction	-\$152.00	50% Net income	-\$0.00
No Medical Expenses exceeding \$35			
No Dependent Care Expenses		Excess Shelter Expense	\$745.55, but the maximum allowed is \$478.00
Net Income	\$0.00		
Excess Shelter Expense	-\$450		
Net Income	\$0.00		

Individuals, in a household of one, with zero net income qualify for a FoodShare allotment of \$189.00 per month *FSH* §8.1.2. Thus, the agency correctly calculated Petitioner's FoodShare allotment when it applied the February 4, 2014 EVFE.

IS THE PETITIONER ENTITLED TO AUXILIARY BENEFITS FOR FEBRUARY 2014?

The agency treated the February 2014 EVFE as a change report. According to *FSH* §6.1.3.3, all reported changes that cause an increase in FoodShare benefits become effective the first of the month following the month in which the change is reported. Thus, the agency was correct, that the increase in benefits, caused by the February 4, 2014 EVFE would not become effective until March 1, 2014.

The Petitioner argues that the February 4, 2014 EVFE was not a change report, but a correction in her reported income. The Petitioner also argues that because the agency sent her a notice indicating that she would receive \$189 in benefits effective February 1, 2014, she should receive the auxiliary benefits.

First, while the agency may restore benefits, when it discovers an under-issuance of benefits, it may only do so, "if the group did not cause the under-issuance". *FSH* §7.4.1.1 The Petitioner provided the agency with the January 23, 2014 EVFE that contained the incorrect information. The agency determined Petitioner's \$76.00, February 2013 allotment, relying upon that information, which was the best information the agency had at the time. Thus, Petitioner caused the under-issuance of benefits, by providing incorrect information.

Because the Petitioner caused the under-issuance, auxiliary benefits may not be issued for February 2014, even though the agency mistakenly sent the Petitioner a notice advising her that the \$189 allotment would begin February 1, 2014, not March 1, 2014.

CONCLUSIONS OF LAW

The agency correctly calculated Petitioner's FoodShare benefits for February 2013 and it correctly denied auxiliary benefits for February 2013.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

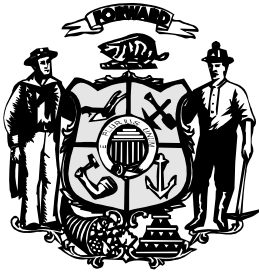
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of April, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on April 8, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability